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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 687

HASKINS BROS. & CO., PETITIONER,

vs.

GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 29, 1937.

CERTIORARI GRANTED FEBRUARY 15, 1937.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 17, 1937.

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[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF NEBRASKA, OMAHA DIVISION

Law No. 3615

HASKINS BROS. & CO., a Corporation, Plaintiff,

vs.

GEORGE W. O'MALLEY, Individually and as Collector of Internal Revenue for the District of Nebraska, Defendant.

PETITION—FILED November 12, 1936

The petition of Haskins Bros. & Co. respectfully Shows:

1. That the petitioner Haskins Bros. & Co., is a corporation organized and existing under and by virtue of the laws of the State of Iowa, and is qualified to do business in Nebraska and maintains its principal office and place of business in the city of Omaha, in the County of Douglas, State of Nebraska, at 115 Hickory Street, the same being in the District of Nebraska, Omaha Division.

2. The defendant George W. O'Malley is the Collector of Internal Revenue for the District of Nebraska, is a citizen of the State of Nebraska, resides in the city of Omaha, Nebraska, in the Omaha Division of the United States District Court for the District of Nebraska, and maintains his principal office as said Collector of Internal Revenue at Omaha, Nebraska. As such Collector of Internal Revenue the said defendant is required by law to collect all taxes, with inter-
[fol. 2] est thereon, and fines and penalties relating thereto, which are provided for by the statutes of the United States of America and due from residents and taxpayers of the said Internal Revenue District of Nebraska, and to compel and enforce payment of such taxes, interest, fines and penalties so provided by statute as the collecting agent, administrative officer, and fiscal representative of the United States of America.

3. That this suit is brought against the defendant under the laws of the United States and is for the recovery of a sum of money called a processing tax imposed by Sec. 602½

of the Revenue Act of 1934 (Act of May 10, 1934, c. 277, 48 Stat. 763) upon the processing by plaintiff of coconut oil, which sum of money is hereby alleged to have been illegally collected from the plaintiff by the Collector of Internal Revenue at Omaha, Nebraska, a copy of the relevant sub-sections (a), (b) and (f) of said Sec. 602½ is, for convenience, attached to this petition, marked Exhibit 1.

The jurisdiction of this Court is based upon USCA Title 28, Sec. 41, Subdivision 5, this being a case arising under a law providing for internal revenue and upon USCA Title 28, Sec. 41 Subdivision 1, this being a suit of a civil nature at common law arising under the Constitution and laws of the United States and the matter in controversy herein exceeding, exclusive of interest and costs, the sum or value of $3,000.00.

4. That the claim of petition is for a refund of the sum of $26,843.02 collected from it by the Collector of Internal Revenue at Omaha, Nebraska. As required by said Sec. 602½ of the Revenue Act of 1934, plaintiff filed the return with said Collector on the form prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, stating that in the months of June, July, August, September and October, 1935, it had used in the manufacture of soap intended for sale 894,767-1/3 pounds of coconut oil in said months, which coconut oil was wholly the production of the Philippine Islands, and together with said return plaintiff did pay said sum of $26,843.02 to the said Collector of Internal Revenue, which sum was 3c per pound upon said Philippine coconut oil as prescribed by said Sec. 602½ of the said Revenue Act of 1934. For abbreviation the expression "Philippine coconut oil" as used in this bill of complaint will signify coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or Philippine production; said payment of said sum of $26,843.02 was [fol. 3] made by petitioner to the said Collector at Omaha, Nebraska, on July 31, August 31, September 30, October 31, November 30, all in 1935.

On January 13, 1936, plaintiff filed with the Bureau of Internal Revenue of the United States its claim for the refund of the said sum of $26,843.02, a true copy of said claim being attached to this bill of complaint, marked Exhibit 2, and is hereby incorporated herein by reference,

which claim was rejected and denied by the Commissioner of Internal Revenue of the United States on the 5th day of February, 1936, a true copy of said rejection and denial being attached hereto, marked Exhibit 3, and hereby incorporated by reference.

5. The plaintiff is now, was at the time of said payment, and for many years previous thereto, in the business of manufacturing soaps and allied products with its manufacturing plant located exclusively at Omaha, Nebraska, and the manufacture of soap and allied products by plaintiff, including the use of Philippine coconut oil in such manufacture, took place at said manufacturing plant and was and is exclusively intrastate in character and exclusively within the State of Nebraska. In the months of June, July, August, September and October, 1935, as well as before and since said months, Philippine coconut oil was and has been an essential and indispensable ingredient of a large proportion of the soaps made and sold by the plaintiff and in these said months, as well as before and since, plaintiff was and has been unable to make use of any substitute for such coconut oil in the manufacture of said large proportion of soaps upon which its business was built and conducted and was and has been dependent. Coconut oil contains lauric acid which is the element causing soap to lather freely. There is no commercially important growth and production of materials containing lauric acid within the boundaries of the continental United States.

6. Philippine coconut oil, either in liquid form or in the solid form of copra when intended for use in the United States, is shipped from the Philippine Islands to ports on the Atlantic and Pacific oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded from said ships and delivered to said dealers at said ports and when delivered the importation of said oil and the transportation thereof from the Philippine Islands to the United States terminates. For the filling of orders from their customers, including the plaintiff herein, said dealers place the oil from time to time in railroad tank cars in which it is transported by rail from the plants or warehouses of the dealers to the plants or warehouses of the coal manufacturers or other users of said Philippine coconut oil. These manufacturers and other users un-

[fol. 4] load these tank cars delivered to them respectively and place the oil in their own storage tanks and other receptacles in their own respective plants and thereupon the interstate transportation of the oil terminates.

All of the above facts concerning the importation and transportation of said Philippine coconut oil apply to and were true of the coconut oil used by the plaintiff in the months of June, July, August, September, and October, 1935, and the use by plaintiff of the said 894,767-1/3 pounds of Philippine coconut oil during said months in the manufacture of soaps and allied products intended for sale constituted the first domestic processing under the terms of said Sec. 602½ of the Revenue Act of 1934 upon which use the exaction in the guise of a tax in said sum of $26,843.02 was imposed as well as of all other Philippine coconut oil used by the plantiff in its manufacture of soap and allied products. All of the said Philippine coconut oil was received by the plaintiff in tank railroad cars into which it had been placed by the dealers from whom plaintiff purchased said Philippine coconut oil and had been delivered to plaintiff in said tank cars at its aforesaid soap manufacturing plant at Omaha, Nebraska, where said oil was unloaded from the tank cars and placed in storage tanks located in said manufacturing plant at Omaha, Nebraska, from which storage tanks it was drawn by plaintiff from time to time for use in the process of manufacturing soap and allied products. The commerce or transportation of the oil which was sold and shipped by the dealers by rail to the plaintiff terminated upon the arrival at the plaintiff's Omaha plant of the tank cars containing said oil, and use of the oil in the manufacture of soap did not and could not commence until after the complete termination of both the foreign commerce and transportation from the Philippines to the dealer and the commerce and transportation from the dealer to the plaintiff, none of said oil whatsoever was imported by plaintiff from the Philippines or purchased by the plaintiff from any grower thereof or dealer therein located in the Philippine Islands.

There is some Philippine coconut oil imported into the United States and used therein without a domestic processing which would subject it to the exaction in the guise of taxes provided for by Sec. 602½ of the Revenue Act of 1934.

7. It was in June, July, August, September and October, 1935, and before and after those months, that plaintiff was and is now unable to recover the amounts imposed upon it [fol. 5] by the provisions of said Section 602½ relating to the processing of Philippine coconut oil by increasing prices at which it sold or sells its soaps. Such products were sold and are salable only in highly competitive markets; and the selling prices thereof were not and are not and could not and cannot be controlled by the petitioner, but were and are in fact controlled by competitive conditions in the industry. If petitioner undertook to increase the prices of its soaps to the extent represented by the amount of such processing taxes, it would have been and would be unable to dispose of such products at such increased prices because of market and competitive conditions in the soap industry over which petitioner had and has no control. The three cents per pound imposed by said Section 602½ constituted about thirty (30%) percent of the total manufacturing cost of petitioner's coconut oil soaps. The conditions of and situation in the soap industry and trade were at the time of the enactment of said Sec. 602½ and have since been such that the addition to its production costs imposed by said section upon Philippine coconut oil made and has continued to make it impossible for petitioner to conduct its business at a profit and subjected petitioner's business to an operating loss. Previous to the effectiveness of said Section 602½ petitioner had been able to conduct its business at a substantial profit, but since the effectiveness of said section it has suffered a substantial operating loss, notwithstanding that its business has been prudently, economically and efficiently managed and conducted; and this loss results from the provisions of said Section 602½ imposing upon the first domestic processing of Philippine coconut oil " a tax of 3 cents per pound to be paid by the processor."

8. Petitioner further states that the Philippine Independence Act (Act of March 24, 1934, 48 U. S. C. A., #1231 to 1247) has been in full force and effect from and after May 1, 1934, and has been in full force and effect since the enactment of said Section 602½ of the Revenue Act of 1934 and is now in full force and effect.

The constitution for the government of the Commonweath of the Philippine Islands has been formulated and

drafted; has been submitted to the President of the United States; has been certified by the President to conform substantially with the provisions of the Philippine Independence Act (Act of March 24, 1934, 48 U. S. C. A. Sections #1231 and 1247); has been submitted to the people of the Philippine Island at an election; has been ratified at said election by a majority of the votes cast; and election has been held to select officers of the government of the Com- [fol. 6] monwealth of the Philippine Islands provided for in said constitution of that Commonwealth; a Proclamation has been issued by the President of the United States announcing the results of the election; the new government of the Philippine Islands has been inaugurated and taken office, and has entered upon its rights, privileges, powers, and duties as provided by the said constitution of the Commonwealth of the Philippine Islands and by the said Philippine Independence Act.

That petitioner has been informed and believes, and, therefore avers the fact to be that the Philippine Islands are no longer an insular possession of the United States but are now a separate nation and commonwealth, with its own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States.

The Philippine Government has not provided by any law for any subsidy to be paid to the producers of copra, coconut oil or allied products.

9. As required by the said Sec. 602½ of the Revenue Act of 1934, the said sum of $26,843.02, and all the other sums paid by plaintiff upon the processing of Philippine coconut oil since said Sec. 602½ took effect and all sums similarly paid by other soap manufacturers and other processors of Philippine coconut oil have been placed in a separate fund held exclusively for the benefit of and to be paid over in its entirety to the treasury of the Philippine Islands. No part of said fund which is now in excess of the sum of Thirty Million Dollars ($30,000,000.00) has ever been paid over to date to the treasury of the Philippine Islands.

10. Petitioner further alleges that the object and purpose of Congress in imposing upon the processing of Philippine coconut oil the so-called taxes mentioned in said Sec. 602½ of the Revenue Act of 1934 was not to raise revenues

with which to pay the debts or provide for the common defense or general welfare of the United States or for the support of or operation of the Government of the United States, but that said object and purpose of said section, as appears on the face thereof as well as from the proceedings in Congress while said section was pending, was to regulate the volume of production and the selling prices of certain vegetable oils and fats produced within the United States by compelling soap manufacturers and other manufacturers using coconut oil to substitute said domestic vegetable oils in place of coconut oil in the manufacture of their soaps. [fol. 7] The said Sec. 602½ is a statutory plan to regulate intrastate production and manufacture.

11. All of the provisions of said Sec. 602½ relating to Philippine coconut oil, namely the so-called processing tax, the holding of the proceeds thereof as a separate fund, the payment of such separate fund to the Treasury of the Philippine Islands and the cessation of such payment after the Philippine Government provides by law for a subsidy to producers of copra and coconut oil, are interrelated, intertwined, interdependent and integrated parts of one legislative plan and of one scheme of legislation and are therefore inseparable.

12. The oils referred to in Sec. 602½ of the Revenue Act of 1934, and more especially coconut oil, are not produced in any substantial quantity within the United States but [complee] for use in food products such as salad oil, margarin and confection, and in soaps, with oils and fats, such as cottonseed oil, grease and tallow, which are produced domestically by the farmers and dairy interests of the United States, and the purpose of the Congress in imposing the exactions in the guise of taxes mentioned in said Sec. 602½ was not to raise revenue, but to further the general plan of regulation of agriculture and manufacturing incorporated in the Act of May 12, 1933, c. 25, 48 Stat. 31, known as the "Agricultural Adjustment Act of 1933", which has been declared unconstitutional by the Supreme Court of the United States. The purpose of said exactions in the guise of taxes is solely to increase the cost of said oils, and particularly coconut oil, to a point which will permit a corresponding increase in the prices of oils and fats produced domestically and by the farmers and dairy interests of the United States, and further to reduce the consumption of said oils men-

tioned in Sec. 602½, and particularly coconut oil, and thereby regulate the production and increase the price of domestic fats and oils and force their consumption as a substitute for coconut oil upon the plaintiff, and other first domestic processors of said oil, and at the same time to create a further use of such illegal and unauthorized exactions in the guise of taxes to be paid to the Treasury of the Philippine Islands to compensate it for the breach of the agreement of the Government of the United States to permit the entry of 200,000 long tons of Philippine coconut oil per year into the United States free from the imposition of duties or other restrictions to reduce importation or increase the price thereof for a period of years after the [unauguration] of the Government of the Philippine Islands [fol. 8] under and by virtue of the said Philippine Independence Act.

13. Plaintiff is advised by counsel, believes and therefore avers, that the said exactions in the guise of Federal excise taxes upon the first domestic processing of Philippine coconut oil are unconstitutional and void for the following reasons:

1. The imposition of said taxes upon this taxpayer was by virtue of an unconstitutional and void statute being Sec. 602½ of the Revenue Act of 1934, in that said statute was a scheme to regulate the production of domestic fats and oils, and the money thus raised is, by said statute, required to be held in a separate fund in the Treasury, and is attempted to be appropriated in advance to be paid to the Treasury of the Philippine Islands, and does not go to the general support of the Government of the United States. The taxpayer therefore has standing to challenge the legality of the exaction of such tax from it.

2. The exaction from this taxpayer and other processors of Philippine coconut oil of said payments provided for by Sec. 602½ of the Revenue Act of 1934 was by an unconstitutional and void statute, in that it provided for an expropriation of money from one group, i. e., the first domestic processors in the United States of Philippine cononut oil, for the benefit of another group, i. e., the people of the Philippine Islands, and the said exaction was not imposed to effect regulation of a matter in which both groups are interested

and in respect of which there is a power of legislative regulation.

3. The said tax attempted to be imposed by Sec. 602½ (a) of the Revenue Act of 1934 upon said Philippine coconut oil first domestically processed by the taxpayer, and the integral and inseparable provision found in said sub-section (a) that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands is not within the delegated powers granted by the Constitution to the Congress of the United States, and said statute is therefore unconstitutional and void in its entirety.

4. The imposition of said tax upon plaintiff and others similarly situated holding the same in a separate fund, and requiring the same to be paid over to the Treasury of the Philippine Islands, do not come within the taxing power of Congress under Article 1, Section 8, Clause 1 of the Constitution of the United States.

[fol. 9] The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they were not imposed to pay the debts or provide for the common defense or the general welfare of the United States but were imposed for the benefit of the Philippine Islands, which are not a part of the United States within the meaning of this clause, and the said taxes are not being levied to pay the debts nor to provide for the common defense and general welfare of the United States.

5. The attempt by Congress to impose the tax provided for in Sec. 602½(a) of the Revenue Act of 1934 as a means to the end of regulating production in the several states was an attempt to exercise a power not expressly granted to the Federal Government and not impliedly necessary for the exercise of any granted power, specifically the interstate commerce power, but is reserved to the States under the 10th Amendment, which is as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively or to the people."

6. Sec. 602½ (a) is entirely unconstitutional and void for the reason that the attempted exercise by the Congress of

the United States of its power to tax and spend was not for a truly national purpose, nor for the general welfare of the United States, but was for the exclusive benefit of the people of the Philippine Islands, and the power to tax having been exercised for an unauthorized and illegal purpose inseparably connected with the tax, the tax itself is unauthorized and void.

7. The Congress of the United States, in imposing the tax upon plaintiff and others similarly situated, provided for in Sec. 602½ (a) of the Revenue Act of 1934, and in providing that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands, has violated Article 1, Section 9, Clause 7 of the Constitution of the United States, which is as follows:

"No money shall be drawn from the treasury but in consequence of appropriations made by law; • • •"

there having been no valid nor sufficient appropriation made by law as to the said taxes upon Philippine Islands' coconut oil to authorize the same being paid over to the Treasury of the Philippine Islands.

[fol. 10] 8. The said tax imposed by Sec. 602½(a) of the Revenue Act of 1934 upon Philippine coconut oil first domestically processed by plaintiff, and others similarly situated, and the provision of said Act that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands, is in violation of the 5th Amendment to the Constitution of the United States, which provides in part:

"No person shall be • • • deprived of life, liberty or property, without due process of law • • •",

in that one group of citizens of the United States, being the plaintiff and others similarly situated, are deprived of their property, and the valuable property rights of carrying on their business unmolested by prohibitory taxation, which said taxes are not for general revenue for public purposes, but are taxes levied on one group of persons, i. e., processors of Philippine coconut oil, being the plaintiff and others similarly situated, for the exclusive benefit of another group of persons, i. e., the Government of the Philippine Islands.

9. The said taxes if construed as direct taxes violate Article 1, Section 9, Clause 4 and Article 1, Section 2, Clause 3 of the Constitution, because they are not apportioned according to population.

10. The said alleged taxes cannot be levied under Article 1, Section 8, Clause 3 of the Constitution, regulating commerce, because the processing of coconut oil done by plaintiff is exclusively in intrastate commerce and cannot be regulated by Congress.

11. The imposition of said tax by said statute is arbitrary, capricious and therefore void because it is not a true tax, but a subterfuge to evade the requirement of the Philippine Independence Act (Act of March 24, 1934; 48 U. S. C. A. #1231 to 1247) which was in full force and effect from and after January 17, 1933, and at the present time, and which provides that two hundred thousand long tons of Philippine coconut oil may be imported from the Philippines each year into the United States free of duty, and said tax was attempted to be levied by Congress as an integral and inseparable part of a scheme to regulate and control the wholly intrastate manufacturing business of the taxpayer by forcing it to use much less coconut oil, and as substitutes therefor oils and fats produced domestically by the farmers and dairy interests of the United States, and by said tax the Congress attempt to arbitrarily and unreasonably exercise a power over domestic production and use of oils and fats not expressly granted nor delegated to it by the Constitution of the United States, nor reasonably to [fol. 11] be implied therefrom, and the said tax is therefore in violation of the Tenth Amendment, and unconstitutional and void.

12. Sec. 602½(a) of the Revenue Act of 1934 is unconstitutional and void for the further reason that it provides for a tax of 3¢ a lb. on palm oil which may be used by this taxpayer in the manufacture of soap, but excludes from the said tax palm oil used in the manufacture of tin plate, which is arbitrary, capricious, unreasonable and discriminating and results in a lack of uniformity between the first domestic processing of palm oil by this taxpayer and all other processors except those using the same in the manufacture of tin plate, and hence is in violation of Article 1, Section 8, Clause 1 of the Constitution.

13. Said taxes so imposed on the taxpayer by 602½(a) of the Revenue Act of 1934 are unconstitutional and void for the further reason that the taxes paid are still held in a separate fund in the Treasury of the United States earmarked for the Treasury of the Philippine Islands, but the Philippine Islands are not a part of the United States, and are no longer an insular possession of the United States, but are now, and since November 15, 1935, have been a separate nation and commonwealth, with their own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States, wherefore it is unauthorized, illegal and improper to pay over the taxes exacted from this taxpayer to the present Government of the Philippine Islands, and the sum of $26,843.02 paid by this taxpayer as aforesaid, and now comprising a part of the separate fund under statute held by the Treasury of the United States still legally, and in equity and good conscience belongs to the taxpayer, and should be returned to it.

A summary of the taxes paid by months, which are included in this claim, are as follows:

June 1935, paid July 21, 1935, $5770.16, July 1935, paid August 31, 1935, $5872.65, August 1935, paid September 30, 1935, $4267.37, September 1935, paid October 31, 1935, $3656.40, and October 1935, paid November 30, 1935, $7276.44, total $26,843.02.

14. All of the aforesaid exactions from the plaintiff in the guise of so-called taxes, in the amount of 3¢ a pound on the first domestic processing of Philippine coconut oil, amounting to the total of $26,843.02, as aforesaid, have been collected by the defendant from plaintiff under and by virtue of the express provisions of sub-section (f) of said Act, making other provisions of the revenue laws (including [fol. 12] penalties), applicable, under threats of penalties, interest, imposition of a lien against plaintiff's properties and the properties of others similarly situated, and distraint or other forcible collection proceedings, and because of said threats, duress, and coercion plaintiff has actually paid to the defendant as Collector of Internal Revenue, as aforesaid, the sum of $26,843.02 for the period and upon the date above specifically set forth.

15. For any, each and every of the above reasons and upon the facts and the law, the collection of the said sum of $26,843.02 from the plaintiff was erroneous and illegal and under and by virtue of an unconstitutional and void Statute, being Sec. 602½ of the Revenue Act of 1934, and the plaintiff is entitled to a refund of said sum of $26,843.02, together with interest thereon at 6% per annum from the 31st day of July, 1935, upon $5,770.16, with interest thereon at 6% per annum upon $5,872.65 from August 31, 1935, with interest thereon at 6% per annum upon $4,267.37 from September 30, 1935, with interest thereon at 6% per annum upon $3,656.40 from October 31, 1935, and with interest thereon at 6% per annum upon $7,276.44 from November 30, 1935, the dates said sums were paid by the plaintiff to the Collector of Internal Revenue, at Omaha, Nebraska, and that the defendant is indebted to the petitioner for that sum with said interest.

16. Wherever reference is made in this bill of complaint to a "tax" upon the first domestic processing of Philippine coconut oil it is for convenience only since the exaction complained of is not a true tax and should not have been levied nor collected from the plaintiff for the above reasons.

Wherefore, plaintiff prays for a judgment against the defendant upon the facts and law for the principal sum of $26,843.02, together with interest thereon at 6% per annum upon $5,770.16 from the 31st day of July, 1935, with interest thereon at 6% per annum upon $5,872.65 from the 31st day of August, 1935, with interest thereon at 6% per annum upon $4,267.37 from the 30th day of September, 1935, with interest thereon at 6% per annum upon $3,656.40 from the 31st day of October, 1935, and with interest thereon at 6% per annum upon $7,276.44 from the 30th day of November, 1935, together with its reasonable costs and disbursements, and for such other and further relief in the premises as may be just.

Crossman, Munger & Barton, Alfred C. Munger, Attorneys for Plaintiff.

[fol. 13] *Duly sworn to by Wm. Newton, Jr. Jurat omitted in printing.*

EXHIBIT 1 TO PETITION

Sec. 602½ Processing Tax on Certain Oils

"(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound to be paid by the processor, upon the first domestic processing of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence, shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials of the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of the enactment of this Act, or (D) was purchased under a bona fide contract [fol. 14] entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article in-

tended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

"(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessments by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

• • •

"(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, in so far as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section."

[fol. 15]

EXHIBIT 2 TO PETITION

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Claim

To Be Filed With The Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Collector's Stamp
(Date received)

☐ Refund of Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

STATE OF NEBRASKA,

County of Douglas, ss:

Type or Print

Name of taxpayer or purchaser of stamps: Haskins Brothers & Co.

Business address: 115 Hickory Street (Street) Omaha (City) Nebraska (State)

Residence.....

[fol. 16] The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed—Collector of Internal Revenue, Omaha, Nebraska.

2. Period (if for income tax, make separate form for each taxable year) from June 1, 1935, to October 31, 1935.

3. Character of assessment or tax—3c a lb. on Philippine coconut oil under Sec. 602½A of Rev. Act of 1934.

4. Total amount of assessment, $26,843.02; dates of payment July 31, Aug. 31, Sept. 30, Oct. 31, Nov. 30, all 1935.

5. Date stamps were purchased from the Government.

6. Amount to be refunded $26,843.02

7. Amount to be abated (not applicable to income or estate taxes) ..... $

8. The time within which this claim may be legally filed expires, under Section 3228 (a) of U. S. Revised Stat. as amended July 31, Aug. 31, Sept. 30, Oct. 31, Nov. 30, all in 1939.

The deponent verily believes that this claim should be allowed for the following reasons:

1. The imposition of said taxes upon this taxpayer was by virtue of an unconstitutional and void statute, being Sec. 602½ of the Revenue Act of 1934 in that said statute was a scheme to regulate the production of domestic fats and oils, and the money thus raised is, by said statute, required to be held in a separate fund in the Treasury, and is attempted to be appropriated in advance to be paid to the Treasury of the Philippine Islands, and does not go to the general support of the Government of the United States. The taxpayer therefore has standing to challenge the legality of the exaction of such tax from it.

2. The exaction from this taxpayer and other processors of Philippine coconut oil of said payments provided for by Sec. 602½ of the Revenue Act of 1934 was by an unconstitutional and void statute, in that it provided for an expropriation of money from one group, i. e., the first do-

mestic processors in the United States of Philippine coconut oil, for the benefit of another group, i. e., the people of the Philippine Islands, and the said exaction was not imposed to effect regulation of a matter in which both groups are interested and in respect of which there is a power of [fol. 17] legislative regulation.

Par's. 3 to 13, on attached sheets, are a part hereof.

3. The said tax attempted to be imposed by Sec. 602½ (a) of the Revenue Act of 1934 upon said Philippine coconut oil first domestically processed by the taxpayer, and the integral and inseparable provision found in said sub-section (a) that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands is not within the delegated powers granted by the Constitution to the Congress of the United States, and said statute is therefore unconstitutional and void in its entirety.

4. The imposition of said tax upon plaintiff and others similarly situated, holding the same in a separate fund, and requiring the same to be paid over to the Treasury of the Philippine Islands, do not come within the taxing power of Congress under Article 1, Section 8, Clause 1 of the Constitution of the United States.

The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1, of the Constitution to levy and collect taxes, duties, imposts and excises, in that they were not imposed to pay the debts or provide for the common defense or the general welfare of the United States but were imposed for the benefit of the Philippine Islands, which are not a part of the United States within the meaning of this clause, and the said taxes are not being levied to pay the debts nor to provide for the common defense and general welfare of the United States.

5. The attempt by Congress to impose the tax provided for in Sec. 602½ (a) of the Revenue Act of 1934 as a means to the end of regulating production in the several States was an attempt to exercise a power not expressly granted to the Federal Government and not impliedly necessary for the exercise of any granted power, specifically the interstate commerce power, but is reserved to the States under the 10th Amendment, which is as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively or to the people."

6. Sec. 602½ (a) is entirely unconstitutional and void for the reason that the attempted exercise by the Congress of the United States of its power to tax and spend was not for a truly national purpose, nor for the general welfare of the United States, but was for the exclusive benefit of the people of the Philippine Islands, and the power to tax having [fol. 18] been exercised for an unauthorized and illegal purpose inseparably connected with the tax, the tax itself is unauthorized and void.

7. The Congress of the United States, in imposing the tax upon plaintiff and others similarly situated, provided for in Sec. 602½ (a) of the Revenue Act of 1934, and in providing that said taxes shall be held in a separate fund and paid over to the Treasurer of the Philippine Islands, has violated Article 1, Section 9, Clause 7 of the Constitution of the United States, which is as follows:

"No money shall be drawn from the treasury but in consequence of appropriations made by law; • • •"

there having been no valid nor sufficient appropriation made by law as to the said taxes upon Philippine Islands' coconut oil to authorize the same being paid over to the Treasury of the Philippine Islands.

8. The said tax imposed by Sec. 602½ (a) of the Revenue Act of 1934 upon Philippine coconut oil first domestically processed by plaintiff, and others similarly situated, and the provision of said Act that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands, is in violation of the 5th Amendment to the Constitution of the United States, which provides in part:

"No person shall be • • • deprived of life, liberty or property, without due process of law • • •"

in that one group of citizens of the United States being the plaintiff and others similarly situated, are deprived of their property, and the valuable property rights of carrying on their business unmolested by prohibitory taxation, which

said taxes are not for general revenue for public purposes, but are taxes levied on one group of persons, i. e., processors of Philippine coconut oil, being the plaintiff and others similarly situated, for the exclusive benefit of another group of persons, i. e., the Government of the Philippine Islands.

9. The said taxes if construed as direct taxes violate Article 1, Section 9, Clause 4 and Article 1, Section 2, Clause 3 of the Constitution, because they are not apportioned according to population.

10. The said alleged taxes cannot be levied under Article 1, Section 8, Clause 3 of the Constitution, regulating commerce, because the processing of coconut oil done by plaintiff, is exclusively in intrastate commerce and cannot be regulated by Congress.

[fol. 19] 11. The imposition of said tax by said statute is arbitrary, capricious and therefore void because it is not a true tax, but a subterfuge to evade the requirement of the Philippine Independence Act (Act of March 24, 1934; 48 U. S. C. A. #1231 to 1247) which was in full force and effect from and after January 17, 1933, and at the present time, and which provides that two hundred thousand long tons of Philippine coconut oil may be imported from the Philippines each year into the United States free of duty, and said tax was attempted to be levied by Congress as an integral and inseparable part of a scheme to regulate and control the wholly intrastate manufacturing business of the taxpayer by forcing it to use much less coconut oil, and as substitutes therefor oils and fats produced domestically by the farmers and dairy interests of the United States, and by said tax the Congress attempt to arbitrarily and unreasonably exercise a power over domestic production and use of oils and fats not expressly granted nor delegated to it by the Constitution of the United States, nor reasonably to be implied therefrom, and the said tax is therefore in violation of the Tenth Amendment, and unconstitutional and void.

12. Sec. 602½(a) of the Revenue Act of 1934 is unconstitutional and void for the further reason that it provides for a tax of 3c a lb. on palm oil which may be used by this taxpayer in the manufacture of soap, but excludes from the said tax palm oil used in the manufacture of tin plate,

which is arbitrary, capricious, unreasonable and discriminatory and results in a lack of uniformity between the first domestic processing of palm oil by this taxpayer and all other processors except those using the same in the manufacture of tin plate, and hence is in violation of Article 1, Section 8, Clause 1 of the Constitution.

13. Said taxes so imposed on the taxpayer by 602½(a) of the Revenue Act of 1934 are unconstitutional and void for further reason that the taxes paid are still held in a separate fund in the Treasury of the United States earmarked for the Treasury of the Philippine Islands, but the Philippine Islands are not a part of the United States, and are no longer an insular possession of the United States, but are now, and since November 15, 1935, have been a separate nation and commonwealth, with their own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States, wherefore it is unauthorized, illegal and improper to pay over the taxes exacted from this taxpayer to the present Government of [fol. 20] the Philippine Islands, and the sum of $26,843.02 paid by this taxpayer as aforesaid, and now comprising a part of the separate fund under statute held by the Treasury of the United States still legally, and in equity and good conscience belongs to the taxpayer, and should be returned to it.

A summary of the taxes paid, by months, which are included in this claim, are as follows:

For Month of June, 1935, paid July 31, 1935	$5,770.16
For Month of July, 1935, paid Aug. 31, 1935	5,872.65
For Month of Aug. 1935, paid Sept. 30, 1935	4,267.37
For Month of Sept. 1935, paid Oct. 31, 1935	3,656.40
For Month of Oct. 1935, paid Nov. 30, 1935	7,276.44
	$26,843.02

Sworn to and subscribed before me this — day of ——, 193-. (Signed) (Signature of officer administering oath:) —— ——, (Title:) ——.

EXHIBIT 3 TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to

Feb. 5, 1936.

Haskins Bros. & Co., Omaha, Nebraska.

GENTLEMEN:

Reference is made to your claim for refund in the amount of $26,843.02, representing tax and interest alleged to have been erroneously paid under the provisions of section 602½ of the Revenue Act of 1934 on the first domestic processing of coconut oil during the period July 1935 to October 1935, inclusive.

[fol. 21] You contend that your claim should be allowed for the reason that section 602½ of the Revenue Act of 1934 imposes an injust and discriminating tax and is, in fact, unconstitutional.

You are advised that it is the province of this office to administer certain laws enacted by Congress and it is without authority to pass upon the constitutionality of such laws. Inasmuch as you have set forth no other contention in support of your claim for refund on which consideration can be given, it is the opinion of the Bureau that the processing or use of coconut oil was correctly subject to tax.

Your claim, therefore, is rejected in full.

Respectfully, Guy T. Helvering, Commissioner, by D. S. Bliss, Deputy Commissioner.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR ISSUANCE OF SUMMONS—Filed November 12, 1936

To the Clerk of said Court:

Please issue summons for defendant.

In the above-entitled cause.

Dated this 12th day of November, 1936.

Haskins Bros. & Co., Pl., by Alfred C. Munger, Atty.

[File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

SUMMONS AND MARSHAL'S RETURN—Filed November 18, 1936

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division:

The President of the United States of America to the Marshal of the District of Nebraska, Greeting:

You are hereby commanded to notify the Defendant George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska, that he has been sued by Haskins Bros. & Co., a corporation, in the District Court of the United States, for the District of Nebraska aforesaid, at Omaha, Nebraska; that unless he answer on or before the 14th day of December, A. D. 1936, the petition of said plaintiff, filed against him in the Clerk's office of said court, will be taken as true and judgment rendered accordingly.

You will make due return of this Summons on or before the 23rd day of November, 1936.

Witness, the Honorable Judges of the District Court of the United States for the District of Nebraska, at Omaha this 12th day of November, 1936.

R. C. Hoyt, Clerk, by John Nicholson, Deputy.
(Seal.)

If defendant fails to answer, plaintiff will take judgment against the defendant upon the facts and law for the principal sum of $26,843.02, together with interest thereon at 6% per annum upon $5,770.16 from the 31st day of July, 1935, with interest thereon at 6% per annum upon $5,872.65 from the 31st day of August, 1935, with interest thereon at 6% per annum upon $4,267.37 from the 30th day of September, 1935, with interest thereon at 6% per annum upon $3,656.40 from the 31st day of October, 1935, and with interest thereon at 6% per annum upon $7,276.44 from the 30th day of November, 1935, together with its reasonable costs and disbursements, and for such other and further relief in the premises as may be just.

Marshal's Costs:

Service	2.00
Mileage	
Expense (in lieu of mileage)	
Total	$2.00

[fol. 23] Return on Service of Writ

UNITED STATES OF AMERICA,
District of Nebr., ss:

I hereby certify and return that I served the annexed Summons on the therein-named George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska by handing to and leaving a true and correct copy thereof with him personally at Omaha in said District on the 13th day of November, A. D. 1936.

John C. Byrnes, U. S. Marshal, by Earl L. Young, Deputy.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SECURITY FOR COSTS—Filed December 21, 1936

Security for costs is hereby entered in the above cause, and the undersigned agrees to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court. And in default of payment by the plaintiff, of any costs ordered or adjudged to be paid by plaintiff it is hereby agreed and stipulated that execution may issue against the undersigned for any and all costs.

Dated this 11th day of November, 1936.

William Newton, Jr.

[File endorsement omitted.]

In United States District Court

Demurrer of Defendant to Petition—Filed December 9, 1936

To the United States District Court for the District of Nebraska, Omaha Division:

Comes now George W. O'Malley, individually and as Collector of Internal Revenue for the District of Nebraska, the above-named defendant in the above-entitled cause, by Joseph T. Votava, United States Attorney in and for the District of Nebraska, Omaha Division, and Ambrose C. Epperson, Assistant United States Attorney for said District, his attorneys, and respectfully demurs to plaintiff's complaint filed herein and for grounds of said demurrer says:

1. That said complaint fails to allege facts sufficient to constitute a cause of action.

[fol. 24] 2. That said complaint fails to state a cause of action against this defendant because it shows that the tax sought to be recovered was lawfully and correctly assessed and collected under valid and constitutional laws of the United States.

Respectfully submitted, Joseph T. Votava, United States Attorney. A. C. Epperson, Assistant United States Attorney.

[File endorsement omitted.]

In United States District Court for the District of Nebraska, Omaha Division

Law

No. 3615

Haskins Bros. & Co., a Corporation, Plaintiff,

vs.

George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska, Defendant

Order Sustaining Demurrer to Petition; Judgment—Filed December 16, 1936

The Court, having considered the Demurrer to plaintiff's petition herein, and being fully advised in the premises,

finds that said Demurrer is well taken and should be sustained, and the plaintiff, having given notice in open court that it does not desire to plead further, and intends to stand upon the Demurrer, the Court finds that said action should be dismissed.

It Is Therefore Ordered And Adjudged by the Court that the Demurrer of the defendant be and the same hereby is sustained.

It Is Further Ordered that this action be and the same hereby is dismissed at the cost of the plaintiff, to all of which the plaintiff excepts, and an exception is allowed.

Dated: This 16th day of December, A. D., 1936.

By the Court.

J. A. Donohoe, United States District Judge.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed December 24, 1936

To the Honorable James A. Donohoe, Judge of the District Court of the United States, for the District of Nebraska:

The plaintiff above named, Haskins Bros. & Co., feeling aggrieved by the order and judgment of this Court, filed in the above entitled action on the 16th day of December, 1936, hereby appeals from the said order and judgment to the United States Circuit Court of Appeals for the Eighth Circuit.

The errors upon which such appeal is based are contained in the Assignment of Errors, filed herewith.

Petitioner prays that its appeal be allowed, and that a citation issue as provided by law, and that an authenticated transcript of the record, proceedings and papers in this cause, duly authenticated, be forwarded to the said United States Circuit Court of Appeals for the Eighth Circuit, at St. Louis, State of Missouri.

The undersigned petitioner further prays that an order may be made and entered herein, allowing said appeal, and fixing the amount of security to be given by the said plaintiff and appellant, conditioned as provided by law.

That your petitioner hereby tenders bond in such sum as this Honorable Court may require, for the purpose of this appeal.

Dated this 24th day of December, 1936.

Haskins Bros. & Co., Plaintiff and Appellant, by Alfred C. Munger, Raymond M. Crossman, John L. Barton, William Stanley, Its Attorneys.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed December 24, 1936

Comes now the plaintiff above named, Haskins Bros. & Co., a corporation, and files the following Assignment of Errors, upon which it will rely in the prosecution of its appeal to the United States Circuit Court of Appeals for the Eighth Circuit.

[fol. 26]

I

The Court erred in sustaining the demurrer of the defendant to plaintiff's petition, upon the ground: "that said complaint fails to allege facts sufficient to constitute a cause of action".

II

The Court erred in sustaining the demurrer of the defendant to plaintiff's petition, upon the ground: "that said complaint fails to state a cause of action against this defendant, because it shows that the tax sought to be recovered was lawfully and correctly assessed and collected under valid and constitutional laws of the United States."

III

The Court erred in refusing to hold that it had jurisdiction of the parties and the subject-matter of this cause, by reason of the facts alleged in the petition and admitted by defendant's demurrer.

IV

The Court erred in holding that Section 602½ of the Revenue Act of 1934, insofar as the same applies to Philip-

pine Coconut Oil processed by plaintiff, and upon which plaintiff had paid the taxes set forth in the petition, was and is constitutional.

V

The Court erred in dismissing plaintiff's action.

VI

The Court erred in refusing to hold that plaintiff had complied, before filing this action, with all jurisdictional requirements as to filing claim for refund, the same having been denied, and the action being timely instituted.

VII

The Court erred in failing to find that the object and purpose of Section 602½ of the Revenue Act of 1934, insofar as it relates to Philippine Coconut Oil processed by plaintiff, was to raise the prices of competing oils and fats produced in the United States by exacting money from the processor of such Philippine Coconut Oil and paying over such monies intact to the Treasury of the Philippine Islands.

[fol. 27]

VIII

The Court erred in failing to find that Section 602½ of the Revenue Act of 1934 is a statutory plan to regulate intrastate agricultural production of certain domestically produced oils and fats competing with Philippine Coconut Oil, and that the exaction of said alleged taxes from plaintiff was an inseparable part of said plan.

IX

The Court erred in failing to find that the exaction from plaintiff of alleged taxes upon the first domestic processing by plaintiff of Philippine Coconut Oil was not to raise revenue to pay the debts or provide for the common defense or general welfare of the United States.

X

The Court erred in refusing to hold that Section 602½ of the Revenue Act of 1934 was and is unconstitutional.

XI

The Court erred in refusing to hold that the Philippine Islands, from and after the enactment of Section 602½ of the Revenue Act of 1934, on May 10, 1934, were not a part of the United States, within the meaning of the revenue clauses of the Constitution.

XII

The Court erred in refusing to hold that the Philippine Islands are not a part of the United States, from and after the enactment of the Philippine Independence Act and the qualification of the new Philippine government thereunder.

XIII

The Court erred in refusing to hold that plaintiff was totally unable to recover any of the taxes sued for by passing same on by increasing prices, or back by reducing costs, and that therefore plaintiff's property was taken by the exactions without due process of law.

XIV

The Court erred in failing to find that the condition subsequently provided for by Section 602½ (a) of the Revenue Act of 1934, to-wit: the provision by the Philippine [fols. 28-29] Government of any subsidy to be paid to the Philippine producers of copra and coconut oil, has not happened.

Dated this 24th day of December, 1936.

Haskins Bros. & Co., Plaintiff and Appellant, by Alfred C. Munger, Raymond M. Crossman, John L. Barton, William Stanley, Its Attorneys.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL AND FIXING BOND—Filed December 24, 1936

Upon the petition of Haskins Bros. & Co., plaintiff herein, praying for the allowance of an appeal in the above cited cause, It Is

Ordered By The Court, that the said petition be granted, and the appeal prayed for is allowed, upon the condition, however, that the said appellant furnish a bond, as required by law, in the amount of Two Hundred Fifty And No/100 ($250.00) Dollars.

Dated this 24th day of December, 1936.

By the Court.

J. A. Donohoe, United States District Judge.

Bond on appeal for $250.00, approved and filed December 24, 1936, omitted in printing.

[fol. 30] Citation, in usual form, showing service on Joseph T. Votava et al., filed December 24, 1936, omitted in printing.

[fol. 31] In United States District Court

Præcipe for Transcript and Acknowledgment of Service Thereof—Filed December 24, 1936

To R. C. Hoyt, Clerk Of The United States District Court, District of Nebraska, Omaha Division:

You Will Please Prepare, and within twenty (20) days from the date of the issuance of the Citation of Appeal in the above entitled case, transmit to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri, duly authenticated copies of all of the papers, records and documents filed in this action, among them specifically the following:

1. Plaintiff's petition.
2. Præcipe for summons.
3. Summons with marshal's return.
4. Security for costs filed by plaintiff herein.
5. Demurrer of defendant to plaintiff's petition.
6. Order sustaining defendant's demurrer and dismissing plaintiff's action, dated December 16, 1936.
7. Petition for Appeal.
8. Assignment of Errors.

9. Order Allowing Appeal.
10. Bond, with Approval Thereon.
11. Citation, with admission of service.
12. This Præcipe of Appellant and Admission of Service Thereof.
13. Clerk's Certificate.

The said transcript to be prepared and duly authenticated and transmitted, as required by law, and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Eighth Circuit.

Dated this 24th day of December, 1936.

Haskins Bros. & Co., by Alfred C. Munger, Raymond M. Crossman, John L. Barton, William Stanley, Its Attorneys.

[fol. 32] The Undersigned, attorneys of record for the above named George W. O'Malley, Individually, and as Collector of Internal Revenue For the District of Nebraska, defendant and appellee herein, Hereby Acknowledge Service of the above Præcipe for Transcript, and Acknowledge Receipt of a copy thereof, this 24th day of December, 1936. It is stipulated that the record shall consist of the foregoing items, and nothing more.

Joseph T. Votava, United States Attorney; Ambrose C. Epperson, Assistant United States Attorney, Attorneys of Record for the said Defendant and Appellee.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 33] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

CLERK'S CERTIFICATE

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing printed record in the case of Haskins Bros. &

Co., a Corporation, Appellant, vs. George W. O'Malley, Individually, and as Collector of Internal Revenue for the District of Nebraska, Appellee, No. 10823, was printed under my supervision.

I do further certify that said above entitled cause has not yet been submitted to the United States Circuit Court of Appeals for the Eighth Circuit.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-eighth day of January, A. D. 1937.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal United States Circuit Court of Appeals, Eighth Circuit.)

[fol. 34] Supreme Court of the United States

Order Allowing Certiorari—Filed February 15, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is set for hearing immediately following No. 659.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,227. United States Circuit Court of Appeals, Eighth Circuit. Term No. 687. Haskins Bros. & Co., petitioner, vs. George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska. Petition for a writ of certiorari and exhibit thereto. Filed January 29, 1937. Term No. 687, O. T., 1936.